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MEMORANDUM

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Richard J. McCain
Kathy L. Mitchell

TO: Frederick County Planning Commission
FROM: Kathy L. Mitchell, Assistant County Attorney *KLM*
DATE: June 13, 2012
RE: Amendments to APFO (Chapter 1-20) and Impact Fee (Chapter 1-22) to Delete Automatic Adjustment Provisions

Note: Although the attached draft ordinance also proposes changes to automatic annual adjustment of impact fees, the Planning Commission's recommendation is sought only for the changes to the APFO School Construction Fees.

BACKGROUND

Pursuant to Article 66B, §10.01, the BOCC established an Adequate Public Facilities Ordinance ("APFO"), codified as Chapter 1-20 of the Frederick County Code. By Ordinance No. 11-18-584, the BOCC revised the APFO to establish a School Construction Fee option for meeting the public school adequacy requirements. This option allows developers, under certain conditions, to pay fees to mitigate for failing the APFO test at the elementary, middle and/or high school levels.

The School Construction Fee provisions state that, unless the BOCC makes other adjustments by resolution, the Fees shall be automatically adjusted on July 1 of each year "to account for inflationary increases in the cost of providing public school facilities utilizing the most recent data from the State of Maryland School Construction Cost Index".

DISCUSSION

On May 10, 2012, the BOCC initiated the public process to remove the automatic adjustment provisions for the School Mitigation Fee. The attached ordinance deletes those provisions.

This means that any changes to the School Mitigation Fee would not be automatic, but would need to be approved through a public process, including Planning Commission and BOCC public hearings.

RECOMMENDATION

The Planning Commission should recommend adoption or denial of the APFO changes shown in the attached draft ordinance.

Attachment – Draft ordinance



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THE EFFECTIVE DATE OF THIS ORDINANCE IS JULY 1, 2012

ORDINANCE NO. _____

AN ORDINANCE TO REMOVE THE AUTOMATIC ADJUSTMENT PROVISIONS OF THE IMPACT FEE ORDINANCE (FREDERICK COUNTY CODE, CHAPTER 1-22) AND THE ADEQUATE PUBLIC FACILITIES ORDINANCE SCHOOL CONSTRUCTION FEE (FREDERICK COUNTY CODE, CHAPTER 1-20)

BACKGROUND

Impact Fees

Pursuant to Article 25, Section 9J, of the Annotated Code of Maryland, the Board of County Commissioners of Frederick County ("BOCC") is authorized to fix, establish, impose and collect development impact fees to finance, in whole, or in part, the capital costs of additional or expanded public works, improvements, and facilities which are necessary to accommodate new construction or development.

Sections 1- 22-13 and 1-22-23 of the Frederick County Impact Fee Ordinance (Chapter 1-22 of the Frederick County Code) provide that, unless the BOCC makes other adjustments by resolution, the public school development impact fee and the library development impact fee shall be automatically adjusted on July 1 of each year to "account for inflationary increases in the cost of providing public facilities utilizing the most recent data from the State of Maryland School Construction Cost Index."

APFO School Construction Fees

Pursuant to Article 66B, §10.01, the BOCC established an Adequate Public Facilities Ordinance ("APFO"), codified as Chapter 1-20 of the Frederick County Code. By Ordinance No. 11-18-584, the BOCC revised the APFO to establish a School Construction Fee option for meeting the public school adequacy requirements.

Section 1-20-62 of the APFO provides that, unless the BOCC makes other adjustments by resolution, the School Construction Fee shall be automatically adjusted on July 1 of each year "to account for inflationary increases in the cost of providing public school facilities utilizing the most recent data from the State of Maryland School Construction Cost Index".

By this Ordinance, the BOCC desires to remove the provisions of Chapter 1-22 and Chapter 1-20 that require automatic adjustment of impact fees and School Construction Fees. Therefore, any changes to these fees will not be automatic, but will be approved through a public hearing process.

This Ordinance was initiated by the BOCC at a meeting on May 10, 2012, and was referred to the Frederick County municipalities for comment on May 16, 2012.

The Frederick County Planning Commission held a duly advertised public hearing on the proposed amendments to the APFO on June 13, 2012, and recommended _____ of this Ordinance; and

The Board of County Commissioners held a duly advertised public hearing on this Ordinance on June 19, 2012, at which time the public had a reasonable opportunity to comment on the proposed revisions and amendments.

Pursuant to Section 1-20-23(A) of the APFO, the Board of County Commissioners finds the proposed revisions and amendments to the APFO, as set forth in this Ordinance, to be in the best interests of the citizens of Frederick County and consistent with the general intent of the APFO.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that Chapters 1-22 and 1-20 of the Frederick County Code are hereby amended as follows:

CHAPTER 1-22 DEVELOPMENT IMPACT FEE PROCEDURES AND REQUIREMENTS

* * *

ARTICLE II. PUBLIC SCHOOL DEVELOPMENT IMPACT FEE

* * *

1-22-13 Annual Adjustment, RESERVED.

~~—(A)— On July 1, 2002, and on July 1 of each year thereafter in which the public school development impact fee is in effect, the amount of the development impact fee, per dwelling unit, shall be automatically adjusted to account for inflationary increases in the cost of providing public facilities utilizing the most recent data from the State of Maryland School Construction Cost Index.~~

~~(B)— In lieu of this automatic adjustment, the County Commissioners may, at their option, determine the appropriate adjustment pursuant to the annual review process set forth in § 1-22-3(B).~~

~~—(C)— Nothing herein shall prevent the County Commissioners from electing to retain the existing public school development impact fee or from electing to waive the adjustment for any given fiscal year or years.~~

~~—(D)—The Finance Director shall make the automatic annual adjustment unless the County Commissioners have, in their annual review, determined an alternate adjustment.~~

* * *

ARTICLE III. LIBRARY DEVELOPMENT IMPACT FEE

* * *

Sec. 1-22-23. Annual Adjustment. RESERVED.

~~(A)—On July 1, 2002, and on July 1 of each year thereafter in which the library development impact fee is in effect, the amount of the library development impact fee, per dwelling unit, shall be automatically adjusted to account for inflationary increases in the cost of providing public facilities utilizing the most recent data from the State of Maryland School Construction Cost Index.~~

~~—(B)—In lieu of this automatic annual adjustment, the County Commissioners may, at their option, determine the appropriate adjustment pursuant to the annual review process as set forth in § 1-22-3(B).~~

~~—(C)—Nothing herein shall prevent the County Commissioners from electing to retain the existing library development impact fee or from electing to waive the inflation adjustment for any given fiscal year or years.~~

~~—(D)—The Finance Director shall make the automatic annual adjustment unless the County Commissioners have, in their annual review, determined an alternate adjustment.~~

CHAPTER 1-20 ADEQUATE PUBLIC FACILITIES

* * *

ARTICLE VI. SCHOOLS

* * *

1-20-62 School Construction Fee Option.

* * *

(G) *Annual adjustment.* RESERVED.

~~—(1)—On July 1, 2012, and on July 1 of each year thereafter, the school construction fees shown in subsection (E) above shall be automatically adjusted to account for inflationary increases in the cost of providing public school facilities utilizing the most recent data from the State of Maryland School Construction Cost Index.~~

~~—— (2) — In lieu of this automatic adjustment, the County Commissioners may, at their option, by resolution, determine the appropriate adjustment.~~

~~—— (3) — Nothing herein shall prevent the County Commissioners from electing to retain the existing school construction fee or from electing to waive the adjustment for any given fiscal year.~~

~~—— (4) — The Finance Director shall make the automatic annual adjustment unless the County Commissioners have determined an alternate adjustment.~~

AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that this Ordinance shall take effect on July 1, 2012.

The undersigned hereby certifies that this Ordinance was approved and adopted on the ____ day of June, 2012.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

David B. Dunn
County Manager

Blaine R. Young, President